

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

)	
In the Matter of:)	
)	Docket No. 50-443-LA-2
NEXTERA ENERGY SEABROOK, LLC)	
)	March 5, 2019
(Seabrook Station Unit 1))	
)	

**NEXTERA’S ANSWER OPPOSING C-10’S MOTION FOR LEAVE TO FILE A REPLY
TO ANSWERS TO C-10’S EMERGENCY PETITION**

On February 13, 2019, C-10 Research and Education Foundation (“C-10”) filed what it styled as an “Emergency Petition” on the above-captioned docket.¹ C-10 cited no procedural basis for its filing. On February 25, 2019, NextEra Energy Seabrook LLC (“NextEra”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff each submitted a response citing the appropriate procedural bases for the various requests embedded in the Emergency Petition, and highlighting the multiple procedural and substantive deficiencies as to each (“Response Pleadings”).²

¹ Emergency Petition by C-10 Research and Education Foundation for Exercise of Commission’s Supervisory Authority to Reverse No Significant Hazards Determination and Immediately Suspend License Amendment and License Renewal Decisions (Feb. 13, 2019) (ML19044A768) (including Attach. 1 and Exhibits 1-4a thereto).

² NRC Staff’s Answer to C-10’s Emergency Petition (Feb. 25, 2019) (ML19056A588); NextEra’s Answer Opposing C-10’s Emergency Petition (Feb. 25, 2019) (ML19056A586) (“NextEra Answer”).

Now, C-10 has filed a “Motion for Leave to Reply” (“Motion”),³ along with its proposed reply (“Reply”),⁴ seeking to rebut the Response Pleadings.⁵ However, 10 C.F.R. § 2.323(c) provides that C-10 has “no right” to file such a rebuttal.⁶ Instead, the regulations state that permission to file a reply may be granted “*only* in compelling circumstances,” which requires a demonstration by the moving party “that it could not reasonably have anticipated the arguments to which it seeks leave to reply.”⁷ C-10 does not remotely satisfy this criterion.⁸ In fact, C-10’s Motion—which consists only of three sentences—fails to address or even acknowledge this textbook legal standard. In accordance with 10 C.F.R. § 2.323(c), NextEra submits this Answer opposing the Motion. As explained below, the Motion should be summarily rejected, and the proposed Reply should be ignored.

First, C-10 argues that it should be granted leave to file its Reply in order to offer its views on: (1) the proper “characterization of the Commission’s standards for taking discretionary review of emergency petitions to exercise the Commission’s inherent supervisory authority,” and (2) whether arguments raised in the Emergency Petition have been “waived” or otherwise are

³ C-10 Research and Education Foundation’s Motion for Leave to File a Reply to Oppositions by NextEra and NRC Staff to Emergency Petition (Mar. 1, 2019) (ML19060A303).

⁴ C-10 Research and Education Foundation’s Reply to Oppositions by NextEra and NRC Staff to Emergency Petition for Exercise of Commission’s Supervisory Authority to Reverse No Significant Hazards Determination and Immediately Suspend License Amendment and License Renewal Decisions (Mar. 1, 2019) (ML19060A304).

⁵ Contrary to C-10’s assertion that its proposed Reply “*totals less than ten pages*,” Motion at 1 (emphasis added), the attached Reply Declaration of Victor E. Saouma, Ph.D (in which he again emphasizes his “expertise” and disparages the work of both the Staff and the Advisory Committee on Reactor Safeguards as “devoid of scientific rigor or independence,” *id.* ¶ 9) brings the proposed Reply to a total of sixteen pages (plus a Certificate of Service).

⁶ By virtue of its filing of the Motion, C-10 acknowledges the applicability of this prohibition in the instant context.

⁷ 10 C.F.R. § 2.323(c) (emphasis added).

⁸ NextEra correctly foreshadowed C-10’s strategy here. *See* NextEra Answer at 2 n.6. The Commission should reject this obvious procedural maneuvering to “get the last word,” which has become all-too-commonplace in recent NRC adjudicatory proceedings.

“barred by NRC regulations.”⁹ However, C-10—now represented by an attorney with decades of experience in NRC adjudicatory proceedings—cannot legitimately argue that it was unreasonable or impossible to anticipate that the Response Pleadings would discuss the “standards” and “regulations” applicable to its Emergency Petition. Indeed, adjudicatory participants have an *affirmative obligation* to “call attention to facts of record which, at the very least, cast a quite different light on the substance of arguments being advanced.”¹⁰ C-10’s failure to anticipate and respond to such challenges does not now give rise to “compelling circumstances.”

Second, C-10 makes the bare assertion that its Reply is “necessary to ensure that the Commission has a complete and accurate record.”¹¹ But the Motion offers *zero* explanation for this assertion. Nevertheless, a brief review of the proposed Reply confirms that the information therein amounts to nothing more than: (1) a reiteration of C-10’s earlier baseless and procedurally-defective arguments; (2) the addition of new, untimely arguments that C-10 could have but did not raise in the Emergency Petition (and indeed throughout many years of opportunities for public participation and ongoing adjudicatory proceedings); and (3) ordinary rebuttal to the Response Pleadings. These simply do not present the “compelling circumstances” required by 10 C.F.R. § 2.323(c), and are entirely unnecessary for a complete and accurate record. More importantly, the Motion does not satisfy C-10’s affirmative burden to demonstrate otherwise.

Accordingly, the Commission should reject C-10’s continued efforts to file extraprocedural pleadings and raise out-of-scope issues in order to delay the proper and standard

⁹ Motion at 1.

¹⁰ *Pub. Serv. Co. of Okla.* (Black Fox Station, Units 1 & 2), ALAB-505, 8 NRC 527, 532 (1978).

¹¹ Motion at 1.

course of NRC action in both the license amendment and license renewal proceedings. The interests of necessity and fairness would be best served by issuing a swift rejection of the Emergency Petition for all of the reasons stated in the Response Pleadings, and by summarily rejecting the Motion and proposed Reply for the reasons stated above, so as to avoid further disruption of the schedule for the adjudicatory hearing in this proceeding.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Steven Hamrick, Esq.
NextEra Energy Seabrook, LLC
801 Pennsylvania Ave., NW Suite 220
Washington, D.C. 20004
Phone: (202) 349-3496
Fax: (202) 347-7076
E-mail: steven.hamrick@fpl.com

Executed in Accord with 10 C.F.R. § 2.304(d)

Paul M. Bessette, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5796
Fax: (202) 739-3001
E-mail: paul.bessette@morganlewis.com

Signed (electronically) by Ryan K. Lighty

Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
Fax: (202) 739-3001
E-mail: ryan.lighty@morganlewis.com

Counsel for NextEra Energy Seabrook, LLC

Dated in Washington, DC
this 5th day of March 2019

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)	
)	
NEXTERA ENERGY SEABROOK, LLC)	Docket No. 50-443-LA-2
)	
(Seabrook Station Unit 1))	March 5, 2019
)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, the foregoing “NextEra’s Answer Opposing C-10’s Motion for Leave to File a Reply to Answers to C-10’s Emergency Petition” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Ryan K. Lighty

Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
Fax: (202) 739-3001
E-mail: ryan.lighty@morganlewis.com

Counsel for NextEra Energy Seabrook, LLC